

Appendix A

Country of Japan
Prefecture of Kanagawa
City of Yokohama

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DECLARATION OF SUSUMU YOSHIDA

The undersigned, SUSUMU YOSHIDA, having first been duly sworn according to law, states that he is competent to testify and has personal knowledge of the facts set forth below:

1. I received a Bachelor of Science degree in food science and technology from Kyushu University in 1997, a Master of Science Degree in food science and technology from Kyushu University in 1999. In 1999 I took a position with Shiseido Co., Ltd.
2. My current duties include research of formulations of cosmetics.
3. My 17 Japanese patents [or patent applications] involve cosmetics, sunscreens and emulsions. My representative Japanese patents/ applications include JP4560122 (B2) , JP4267321 (B2), JP4267319 (B2), JP2004-33663, JP2006-336069 and U.S. patents [or Patent Applications] include U.S. 2010/0010241,.
4. Relevant to the prosecution of my currently pending Application Serial Number 10/540,041, I have reviewed the cited prior art references, Brieva, U.S. 5,066,485, ("Brieva"), in view of Knipper, U.S. 5,514,792, ("Knipper"), and Picard, U.S. 5,510,100, ("Picard").
5. Brieva discloses a composition comprising 0.5% of xanthan gum (a thickener). Knipper teaches that succinoglycan may be used as a thickener in cosmetics. The examiner concludes from this that the skilled artisan would expect to use 0.5% of succinoglycan in place of xanthan gum as in Example 4 of Brieva. This amount of thickener cannot be incorporated into the composition of Brieva because such composition desirably does not settle.

Declaration of Susumu Yoshida

6. Thus, although Brieva suggests that it is possible for the composition to incorporate humectants such as glycerol and/or thickeners such as xanthan gum as optional ingredients, Brieva does not instruct the reader how much to use. The only way that any useful information regarding humectants and thickeners could be obtained from Brieva would be to experiment across the entire range of possibilities (0 to 100%) of humectants and/or thickeners.
7. The thickening behaviors of xanthan gum and succinoglycan are quite different. Succinoglycan has a greater thickening effect than xanthan gum, and yet also easily undergoes “settling.” In terms of “settling,” 0.5% of xanthan gum is equivalent to 0.01% of succinoglycan. The behaviors of the two thickeners depending on the amount are as in the following table. Each property of components (2) to (4) is clear from Table 7 of the specification, reproduced here:

Component	Settling or not	Thickening Property
(1) 0.5 % xanthan gum	Not settling	
(2) 0.01 % succinoglycan	Not settling	Insufficient
(3) 0.05 % succinoglycan	Settling	Sufficient
(4) 0.5 % succinoglycan	Settling	Sufficient

8. Since Brieva intends to provide a composition without settling, only component (1) or (2) can be incorporated into the composition. Brieva uses thickener only in an amount that does not cause settling. Hence, 0.5 or even only 0.05% succinoglycan cannot be used. Also, the use of only 0.01 % succinoglycan does not exhibit sufficient thickening property. Therefore, the Brieva composition may comprise thickeners at the amount with insufficient thickening property, and the said amount is less than 0.05% when thickener is succinoglycan.

Declaration of Susumu Yoshida

I declare that all statements made herein of my own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such statements may jeopardize the validity of the application or any patent issuing thereon.

Further Declarant sayeth naught.

Susumu YOSHIDA

Susumu YOSHIDA

11th of January 2011.